

REMARKS

Applicant submits this paper in favor of the previously filed Amendment filed on October 27, 2011 and expressly requests the Examiner to disregard the previously filed paper and accept this paper as responsive to the non-final Office Action dated June 29, 2011. A petition for a one-month extension of time was filed with the Amendment dated October 27, 2011; therefore, that paper was timely filed. As such, Applicant does not believe any additional fees regarding an additional petition for an extension of time are needed, for example. However, in the event any additional fees are due, please kindly charge the cost thereof to our Deposit Account No.: 13-2855, under order number 31200/42169.

STATUS OF THE CLAIMS

Claims 1-12 are pending, with claims 1, 2, and 6-11 currently amended. Claim 12 is new. More specifically, Applicant deleted “and various hard inserts being introduced into the undersole” from claim 1, and support for this amendment is found, for example, on page 5, last line – page 6, line 3. Applicant also amended claim 1 to clarify that the undersole is a “soft undersole.” Support for this amendment is found, for example, on page 6, line 2. Applicants also added new, dependent claim 12, and support for new claim 12 is found, for example, on page 5, line 39 – page 6, line 28 and Figs. 4-19. No new matter is added. Claims 1-11 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 2, and 4-11 are rejected under 35 U.S.C. §103 (a) as being unpatentable over WO 01/15560 to Mueller (Mueller) in view of U.S. Pat. No. 3,550,597 to Coplans (Coplans). Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller in view of Coplans and further in view of U.S. Pat. No. 5,052,130 to Barry (Barry).

AMENDMENT TO THE SPECIFICATION

Applicant amended the specification on page 6, lines 11, 12 and 19 to recite a resilient “intermediate sole 12, 16” instead of a resilient “midsole 12, 16,” as previously presented. The term midsole stands for two different expressions in the non-translated version of the specification: “Mittelsohle 10” and “Zwischensohle 12, 16.” Due to a translation error,

midsole was used for the both terms, when intermediate sole should have been used for “Zwischensohle 12, 16.” Support for this amendment to the specification is found, for example, on in the international publication of the application, WO 2005/067754, claim 1, last line. As such, Applicant respectfully submits entry of this amendment to the specification. A marked-up version of the amendment is attached in the Appendix.

RESPONSE TO REJECTION OF CLAIMS UNDER 35 U.S.C. §112

In response to the rejection of claims 1-11 under 35 U.S.C. §112, second paragraph, Applicant amended claim 1 to positively recite “a midsole with a midsole bottom.” Support for this amendment is found, for example, in Figs. 1 -18. In view of this amendment, Applicant respectfully submits that the phrase “a midsole bottom” is not vague and indefinite because amended claim 1 positively recites a midsole with a midsole bottom. Applicant also amended claim 1 to recite wherein a twisted plate is built into the sole and forms, together with the undersole, “an intermediate sole,” instead of a midsole, and amended dependent claim 2 to recite “an intermediate sole” instead of a midsole. Due to a translation error, the term midsole stands for two different expressions: “Mittelsohl 10” and “Zwischensohle 12, 16.” As such, support for this amendment to claims 1 and 2 is found, for example, in originally filed claim 1, last line, and originally filed claim 2, respectively, both of which include the Zwischensohle 12, 16 expression. In view of the amendments to claims 1 and 2, Applicant respectfully submits that claims 1 and 2, and each of the other claims that depend directly or indirectly from claim 1 and 2, are clear, and the rejection of claims 1-11 under 35 U.S.C. §112, second paragraph, should be withdrawn.

Regarding claims 6-11, Applicant replaced “outwardly” with “lateral side” and “inwardly” with “medial side,” as suggested by the Examiner. As such, in view of the foregoing, Applicant respectfully submits that claims 6-11 are definite, and the rejection of claims 6-11 under 35 U.S.C. §112 should also be withdrawn.

RESPONSE TO REJECTION OF CLAIMS UNDER 35 U.S.C. §103

Independent Claim 1

The sole independent claim, amended independent claim 1, recites, in part, a diagonally twisted sole comprising a soft undersole, a midsole with a midsole bottom, the midsole bottom being connected to the soft undersole, wherein a twisted plate is built into the sole and forms, together with the undersole, an intermediate sole.

Claim 1, for example, addresses one object of the present invention, which is to correct incorrect placement of the heel and incorrect heel-to-toe movement during walking in such a way that the natural rolling movement with a diagonal load curve of the soles of the feet is gently enforced, and the natural and dynamic movements of the loads of the knees joints and hip joints and of the spinal column are gently enforced during walking. The twisted plate in combination with the soft undersole recited in amended claim 1 ensures this correction.

In contrast, Mueller discloses a device that produces dynamic rolling walking action. The device includes a conventional shoe upper 2 that is connected to a sole 3 with a midsole 10 with a midsole base 11, a lower sole 12 and a sole base 13. The midsole base 11 and the sole base 13 have a curved or circular segment shape to produce an action as if walking barefoot over sand with a trampoline effect. *See, e.g.*, Abstract and Fig. 1. As acknowledged by the Examiner on page 3, Mueller does not disclose a twisted plate, let alone a twisted plate that is built into the sole and forms, together with the undersole, an intermediate sole, as also recited in amended claim 1. In fact, Mueller fails to disclose a twisted plate or any other structure that would help correct the incorrect placement of the heel. Rather, it discloses a shoe that provides dynamic rolling walking action, as described above, giving the feeling of walking barefoot. As such, the Office Action cites to Coplans and asserts that the combination of Mueller in view of Coplans renders claim 1 obvious. Applicant respectfully disagrees.

Coplans discloses a foot supporting and corrective device for augmenting the natural torsion like action of the foot in walking or providing such action where it is entirely

missing. The device includes a torsion unitary member 15 that may be mounted to a flexible sheet 22 and inserted into a shoe or alternatively formed as an integral part of a shoe 28 (Figs. 14 and 15). The unitary member 15 includes a front lifting section 16 and a rear lifting section 17 that are rigidly connected to an intermediate section 18 twisted into the form of a flat torsion spring which yieldably maintains said lifting section in mutually inclined relation at predetermined angles in opposite directions about the longitudinal axis of the foot. See Coplans, col. 3, lines 35-41. In contrast, the sole recited in claim 1 is not only for supporting purposes, but also for dynamically influencing the foot (combined twisting and lifting action).

Like Mueller, Coplans also fails to disclose or suggest the combination of a soft undersole and a twisted plate, as recited in amended claim 1. In fact, Coplans teaches the opposite: while the intermediate section 18 of Coplans has resilient properties, it is “preferably relatively stiff structurally.” *See, e.g.*, col. 3, lines 40-44. It is the combination of the twisted plate and the soft undersole that ensures the correction, and not the twisted sole alone or the soft undersole alone. As such, because this element is completely missing from both Mueller, as explained above, and Coplans, there can be no *prima facie* case of the obviousness, and the rejection of claim 1 should be withdrawn.

For at least these reasons, Applicant respectfully submits that independent claim 1, and each of the claims dependent therefrom, are in allowable form, and the rejection under 35 U.S.C. §103 should be withdrawn.

Dependent Claim 3

Dependent claim 3 is further rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller in view of Coplans and further in view of U.S. Pat. No. 5,052,130 to Barry (Barry). Barry discloses an athletic shoe having a spring plate 20 bonded between a midsole 18 and an outsole 16, and is only cited for providing gait modification plates adjacent to an outsole 16. Barry, however, like both Mueller and Coplans, as explained above, does not disclose or suggest a soft undersole and a twisted plate that is built into the sole and forms, together with the undersole, an intermediate sole, as recited in amended independent claim 1. As such, even if Mueller and Coplans were combined with or modified by Barry, as proposed in the Office Action, the results would not satisfy amended claim 1. For at least

these additional reasons, Applicant respectfully submits that claim 3, which depends from independent claim 1, is in allowable form.

CONCLUSION

In view of the above remarks, Applicant believes the pending application is in condition for allowance. Should there be any outstanding issues that the Office believes may be remedied via teleconference, please contact the undersigned at 312-474-6300.

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